

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
(Western Division)**

**LAURA WHITTEN,**

**PLAINTIFF,**

**v.**

**THE GUARDIAN LIFE INSURANCE  
COMPANY OF AMERICA; and LIFE  
INSURANCE COMPANY OF NORTH  
AMERICA,**

**DEFENDANTS.**

**CIVIL ACTION NO.  
CV-09-1474-JEO**

**MOTION TO STAY TRANSFER AND  
MOTION FOR RECONSIDERATION**

COMES NOW the Plaintiff, Laura Whitten, and moves the Court to stay transfer of this case to the Southern District pending the Court's ruling on the Plaintiff's Motion to Reconsider. The Plaintiff also moves the Court to reconsider its Order dated March 4, 2010 transferring this case to the United States District Court for the Southern District of Alabama, and as grounds for this Motion, Plaintiff states as follows:

1. The Plaintiff reincorporates all previously filed motions and briefs (Docs 14,15, 21, and 23) with the Court.
2. Guardian has not met its burden of proving that this case should be transferred to the Southern District of Alabama. Transfer on the basis of

convenience must “strongly” favor the moving party. As the Plaintiff has previously noted, it is a well-settled fact that a discretionary transfer under 28 U.S.C. § 1404(a) should not be granted absent a clear cut and convincing showing by the defendant that the balance of convenience weighs strongly in favor of the transferee court. See J.I. Kislak Mortg. Corp. v. Connecticut Bank and Trust Co., N.A., 604 F. Supp. 346, 347 (S.D. Fla. 1985). This Court, in its Memorandum Opinion (Document 25), firmly established that most of the §1404(a) factors actually weighed against transfer, and several of these factors were not adequately addressed by Guardian, leading to the conclusion that Guardian has not met the “strong” burden of proof required for transfer.

3. Transferring this case to the Southern District solely due to the interests of justice related to the burden on the Court’s docket would eviscerate Congress’ intent to expand the scope of venue in ERISA cases and render 29 U.S.C. §1132 (e)(2) meaningless. In effect, the Plaintiff’s choice of forum would always be outweighed by the location of the Plaintiff’s residence, overriding any liberal interpretation of ERISA’s venue provision and requiring all Plaintiffs to file suit in the residence in which they live, which was not what Congress intended in its passage of the statute.

4. Alternatively, the Plaintiff requests the Court to transfer venue of this case to the U.S. District Court for the Eastern District of Pennsylvania due to the

convenience of the witnesses, a large majority of which are located in Lehigh Valley, Pennsylvania, as well as the convenience of Defendant Guardian, who maintains the office in which claims decisions were made in Lehigh Valley, Pennsylvania.

WHEREFORE, the Plaintiff respectfully requests that the Court reconsider its Order transferring this case to the Southern District of Alabama, or alternatively, transfer this case to the Eastern District of Pennsylvania. The Plaintiff also respectfully requests that the Court stay transfer of this case to the Southern District pending its decision on Plaintiff's Motion to Reconsider.

Respectfully Submitted,

s/ Jason E. Burgett

Jason E. Burgett

s/ David P. Martin

David P. Martin

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 12, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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s/ Jason E. Burgett  
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